

The Board of Directors and the Executive Leadership Team of  
Danske Bank A/S  
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Sent digitally to Danske Bank A/S by secure email

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## **Order for extension and broadening of the impartial investigation of Danske Bank A/S's debt collection process**

### **Decision**

The Danish Financial Supervisory Authority (the Danish FSA) orders Danske Bank A/S (Danske Bank or the bank) to extend and broaden the impartial investigation that the Danish FSA, by its decision of 26 November 2020, ordered the bank to arrange for and bear the costs of (see section 347b of the Danish Financial Business Act).

The investigation must be extended and broadened to ensure that the impartial reviewers, on an ongoing basis, follow and assess

- the measures taken and to be taken by the bank in relation to the four defined root causes of the errors in the bank's debt collection process and the bank's analyses and specific implementation of measures in relation to the known 28 additional issues and potential additional general issues in the bank's debt collection process that may be identified after the issue of this order
- the bank's measures to identify and communicate to the customers affected by the four root causes and all additional issues identified
- the bank's ongoing progress in the above processes, including whether the bank allocates adequate resources to the work
- implementation of future systems support in respect of the bank's debt collection process, including assessing whether new systems and/or updates to existing systems will ensure that the bank has IT systems that support the bank's future debt collection process.

When the bank has cleansed all data and entered the data in its IT systems, all controls have been completed, and the bank's IT systems for debt collection have been put into standard operation, the internal reviewers will review the final system implementations and/or system changes.

Together with the impartial reviewers, the bank will prepare a detailed and realistic timetable with specific milestones for the further work to be performed for the bank to comply with the Danish FSA's order of 21 September 2020. The timetable must be submitted and approved by the Danish FSA, and reporting must be undertaken in connection with the assessment of the progress of this work.

The decision has been made after submission of the matter to the Danish FSA's Governing Board (see section 345(12)(v) of the Danish Financial Business Act).

### **Background**

On 21 September 2020, the Danish FSA issued four orders to Danske Bank with a view to ensuring that the bank stopped the wrongful collection of amounts to which it was not entitled and corrected serious errors in its debt collection process, including, in particular, errors in the bank's debt collection systems that had been discovered. The purpose of compliance with the orders was to ensure that, in future, the

bank would always be able to perform correct debt collection. Furthermore, the Danish FSA ordered Danske Bank to ensure that affected customers were notified of the errors as soon as the bank had identified these customers.

Pursuant to this decision, Danske Bank was to inform the Danish FSA of its compliance with the four orders within one month. On 20 October 2020, Danske Bank submitted its first explanatory account of the work undertaken to comply with the four orders.

On the basis of Danske Bank's explanatory account, the Danish FSA found that a need existed to clarify and assess the various measures taken and to be taken by Danske Bank to correct the errors in its debt collection system, including clarifying and assessing whether debt collection takes place in accordance with civil law rules on the basis of correct and adequate data.

Furthermore, the Danish FSA found that it did not have the necessary expertise to determine whether the analyses, contemplations, assessments, etc. underlying the bank's measures were satisfactory. The background was that this work requires the involvement of experts who, on the basis of their special expertise, are able to follow and assess the bank's analyses and assessments, including whether sufficient allowance has been made for the rules applicable to interest collection, time-barring and debt collection; these are rules that fall outside the scope of the Danish FSA's core area of expertise. In addition, the Danish FSA found that it did not have the necessary competencies to assess whether the bank's correction of data and strengthened controls in its IT systems would sufficiently address all causes of wrongful collection and the derived consequences.

By the Danish FSA's decision of 26 November 2020, Danske Bank was therefore ordered to arrange for and bear the costs of an impartial investigation of its compliance with the four orders concerning the four root causes and the additional issues subsequently identified by the bank as well as of its remediation of deficiencies in the bank's IT systems for debt collection (see section 347b of the Danish Financial Business Act).

According to the order, the aim of the impartial investigation was to investigate and assess whether the measures taken and to be taken by Danske Bank to correct the errors in its debt collection process would sufficiently address the causes of the errors and the derived consequences.

The bank was also ordered to inform the impartial reviewers, on an ongoing basis, of the choices made by the bank and of the progress in its work to comply with the orders so as to allow the impartial reviewers to notify the Danish FSA if the bank's work did not meet the requirements set out in the Danish FSA's orders. Finally, the aim was to ensure that the bank would be able to complete the follow-up towards the affected customers in the summer of 2021.

Moreover, the impartial investigation involved assessing the additional issues and the steps taken by the bank to solve these issues.

Finally, the impartial investigation was to include an assessment of whether Danske Bank was putting in place satisfactory measures to ensure that existing data is cleansed and subjected to strengthened controls so that no incorrect data is transferred to the bank's IT systems for debt collection in future. Accordingly, it was to be ensured that future debt collection would take place on a correct and adequate basis and be handled by means of appropriate controls.

The investigation was also to clarify whether a new IT system could support the other IT systems and the debt collection process as from the implementation date.

It was not expected that the implementation of the new system setup would be completed prior to the submission of the experts' report. However, it was expected that the experts would be able to assess whether the bank's systems support and controls could be expected to be able to support correct debt collection in future.

At the time of issue of the order in November 2020, the bank expected the clean-up vis-à-vis customers to be completed in the summer of 2021 and subsequently expected to be ready to cleanse data and implement future systems support in respect of the debt collection process. The bank's most recent timetable for solving all of the issues identified, including the new additional issues, shows that the process will extend into 2023.

In February 2021, the bank entered into an agreement with the law firm of Poul Schmith (Legal Adviser to the Danish Government) and KPMG (the impartial reviewers) to the effect that they should jointly conduct the impartial investigation. Under the agreement, the impartial reviewers were to complete their work by the end of June 2021 with a report for the Danish FSA. It was also agreed that regular briefing meetings were to be held between the Danish FSA and the impartial reviewers.

The first status meeting was held at the end of March 2021, and the impartial reviewers stated at the meeting that they, after having launched their investigation, had identified a number of aspects that meant that it would not be possible to complete the investigation by the end of June 2021 for the final report to contain an adequate assessment of Danske Bank's key measures to counter the issues identified in connection with the bank's debt collection process.

This being the case, the Danish FSA, in its letter dated 13 April 2021, informed the experts and the bank that the Danish FSA accepted submission of the impartial reviewers' report to Danske Bank and the Danish FSA at the end of October 2021.

At the end of June 2021, Danske Bank informed the Danish FSA that, by 1 July 2021, Danske Bank would have notified and compensated about 96% of the customers affected by the original four root causes of wrongful debt collection. Hence, final quality control of about 5,600 customer relationships was still outstanding.

The bank also had to realise that the task had continued to increase in complexity and scope because the bank had identified another 13 new issues in addition to the 14 additional issues referred to in appendix 2.5 to the bank's explanatory account of 10 September 2020. Among other things, the complexity concerned interdependencies between the four root causes and the total of 27 additional issues. Moreover, the bank stated that it could not rule out the possibility that additional issues would be identified during the work to be performed. On 1 September 2021, the bank stated that it had identified an additional source of error, bringing the number of additional issues to 28.

The aspects referred to above also meant that it would not be possible for the impartial reviewers to submit their final report in terms of all parts of the task for which they had been engaged by the end of October 2021.

Following a dialogue with Danske Bank and the impartial reviewers, the Danish FSA acknowledged that only the part of the investigation that concerned the original four root causes would be completed by the end of October 2021. This meant that an assessment of the bank's measures in relation to the total of 28 additional issues would subsequently be outstanding.

The Danish FSA also acknowledged that the assessment of the bank's measures to cleanse existing data, controls in connection with the entering of data in the bank's debt collection systems and the assessment of whether the bank's IT systems would be able to support correct debt collection in future would not be available until at a later time.

Subsequently, the Danish FSA has been engaged in another dialogue with the bank and the impartial reviewers about the planning of the submission of the remaining parts of the task and thus the final report.

As part of this dialogue, the Danish FSA has observed that the remediation of the four root causes considered to be the most important sources of errors in September 2021 has proved to constitute a much more limited part of the complex of issues. The scope and complexity of the work undertaken to analyse and correct the additional issues have thus outweighed the work as well as the identification and remediation of the four root causes.

Against this background, extensive work in terms of analysis and correction remains to be undertaken, and this also means that the bank cannot start cleansing existing data and implementing new systems support in respect of its debt collection process.

In this regard, the bank has informed the Danish FSA that it has allocated all available resources to the task, but that the bank is challenged by the fact that the work very much depends on a few key employees who are familiar with both the previous and the existing systems and their designs. Hence, it will not be possible to speed up the work by allocating additional resources. Furthermore, obtaining the necessary information and data for the impartial investigation will depend on these key employees.

The impartial reviewers have confirmed this information and stated that the bank is working seriously and determinedly on the tasks. However, the bank originally chose an approach under which it analysed the sources of errors individually and without taking a holistic approach, which meant that the bank did not necessarily become aware of interdependencies and therefore had to reopen issues the analysis of which had been completed. The bank has subsequently changed this approach.

According to the bank's preliminary estimates, the bank will not have completed analysing and correcting the 28 additional issues until 2022, and only thereafter will the bank be able to start cleansing data and entering the data in its debt collection systems.

### **Legal basis**

Pursuant to section 347b(1) of the Danish Financial Business Act, the Danish FSA may order a financial undertaking to arrange for and bear the costs of conducting an impartial investigation of one or more aspects of the financial undertaking if the Danish FSA deems that this is significant for supervising the undertaking and this is not a routine investigation for the Danish FSA.

According to the special commentary on section 347b of the Danish Financial Business Act<sup>1</sup>, the Danish FSA's order must be based on a specific assessment. Hence, a situation must exist in which the Danish FSA deems it expedient to conduct an impartial investigation of one or more aspects of large significance to its supervision of the undertaking in question.

The investigation may not be a routine investigation for the Danish FSA. Consequently, the provision does not apply to investigations falling within the scope of the Danish FSA's normal activities and area of competence.

Pursuant to section 347b(5), the experts must immediately provide the Danish FSA with information about conditions that they observe during the impartial investigation if there is a not insignificant risk that these conditions could develop such that the undertaking will lose its licence.

As a bank, Danske Bank is a financial undertaking (see section 5(1)(i)(a) of the Danish Financial Business Act). The bank is therefore covered by section 347b of the Danish Financial Business Act.

### **Consultation**

On 8 November 2021, the Danish FSA submitted a draft version of its decision to Danske Bank A/S for comments. Danske Bank made a few comments on the wording of the order, including a request that it be made clear that the experts are not to regularly follow the cleansing of data and the

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<sup>1</sup> The special commentary on the proposed Bill for Act No. 579 of 1 June 2010. See the Official Report of Danish Parliamentary Proceedings 2009-10, annex A, L 175 as proposed, page 73.

implementation of the system changes but are to assess the intended measures, and only after implementation of these changes will the experts assess systems support in respect of the bank's debt collection process when it is in operation.

### **The Danish FSA's assessment**

For the sake of trust in Danske Bank, it is crucial that progress and stability are ensured in respect of the bank's handling of its debt collection cases and the restoration of credibility and trust in the bank's debt collection system.

In its decision of 26 November 2020, the Danish FSA determined that a need existed in regard to the bank's handling of its debt collection cases for investigating whether the measures taken and to be taken by Danske Bank to correct the errors in its debt collection system are adequate enough for the bank to actually correct the errors in its debt collection process. This was in regard to both ensuring that future debt collection takes place in accordance with civil law rules on the basis of correct and adequate data and conducting an investigation and making an assessment of the bank's IT systems for debt collection.

On several occasions, the bank has subsequently informed the Danish FSA that it would not be able to complete the work of correcting the errors in the bank's debt collection systems within the time horizon originally announced. This is due to the ever-increasing complexity of the task, caused, for instance, by the current total of 28 additional issues that have interdependencies and which continue to complicate the process of recalculating the individual customers' debt to the bank. These aspects have also delayed the process of identification and final calculation of compensation to customers. This means that it has not been possible to complete the impartial investigation in accordance with the order of 26 November 2020.

Therefore, if the impartial investigation is to be completed now, the bank will not have completed analysing all additional issues. Moreover, it will not be possible for the impartial reviewers to assess whether the bank's measures to identify and compensate, if applicable, affected customers are sufficient. In addition, the impartial reviewers will not at present be able to assess the bank's work of cleansing existing data, putting in place controls and implementing effective and correct systems support in respect of the bank's debt collection process because this work is not expected to commence until 2022.

Against this background, the Danish FSA finds that the impartial investigation should be extended and the mandate be broadened.

The Danish FSA's decision of 26 November 2020 assumed that the impartial investigation would include an assessment of the additional issues identified and the steps deemed necessary by the bank to resolve these matters. Consequently, the impartial reviewers must also assess the bank's analyses and actual implementation of measures in relation to the known 28 additional issues and potential additional issues that may be identified after the issue of this order. In this connection, the Danish FSA thus finds that it will not be sufficient, as assumed in the original order, that the impartial investigation includes an assessment of the bank's analyses of the additional issues and the bank's intended measures, but that the impartial reviewers must also follow the actual implementation of these measures.

The Danish FSA's decision of 26 November 2020 also assumed that the impartial investigation could be completed once it could be determined whether the bank had taken satisfactory measures to ensure that existing data is cleansed and subjected to strengthened controls and that no incorrect data is transferred to the bank's IT systems for debt collection in future. Thus, the impartial investigation would be completed before the system changes had been made and new systems support in respect of the debt collection process had been put into operation.

On the basis of the experience gained from the bank's previous work and the ever-increasing complexity of the issues, the Danish FSA finds that adequate certainty is not achieved if the impartial investigation is completed before the bank has completed the cleansing of data and has put into operation new systems

support in respect of the debt collection process. In relation to this part of the investigation, the impartial reviewers will be able to split the investigation into two parts: 1) a general assessment of the bank's intended system changes and implementation measures and 2) a review of the changes and measures when they have been implemented and when future systems support in respect of the bank's debt collection process has been put into operation.

Against this background, the Danish FSA finds that the investigation cannot be completed until the bank has implemented all measures in relation to the additional issues and has completed cleansing and entering data, completed controls and put into operation the future systems [sic] debt collection process.

Considering the course of events, the Danish FSA also finds that the impartial investigation should be broadened to regularly assess the bank's progress and the allocation of resources to the project.

In this connection, the Danish FSA has noted the information provided by the impartial reviewers to the effect that the bank did not originally take a sufficiently holistic approach to the complex of issues, which meant that the bank had to reopen issues when new issues were identified. Hence, a need exists to regularly assess whether the bank is taking the right approach and making the necessary resources available in order to maintain project progress.

On this basis, the Danish FSA finds overall that there are sufficient grounds for ordering Danske Bank to extend and broaden the impartial investigation and bear the costs incurred in this connection.

#### **Increased focus and scope of the investigation**

The Danish FSA in general refers to the description of the focus and scope of the impartial investigation set out in the Danish FSA's decision of 26 November 2020 and also orders the bank to extend and broaden the impartial investigation to ensure that the impartial reviewers, on an ongoing basis, follow and assess

- the measures taken and to be taken by the bank in relation to the four defined root causes of the errors in the bank's debt collection process and the bank's analyses and specific implementation of measures in relation to the known 28 additional issues and potential additional general issues in the bank's debt collection process that may be identified after the issue of this order
- the bank's measures to identify and communicate to the customers affected by the four root causes and all additional issues identified
- the bank's ongoing progress in the above processes, including whether the bank allocates adequate resources to the work
- implementation of future systems support in respect of the bank's debt collection process, including assessing whether new systems and/or updates to existing systems will ensure that the bank has IT systems that support the bank's future debt collection process.

When the bank has cleansed all data and entered the data in its IT systems, all controls have been completed, and the bank's IT systems for debt collection have been put into standard operation, the internal reviewers will review the final system implementations and/or system changes.

Together with the impartial reviewers, the bank will prepare a detailed and realistic timetable with specific milestones for the further work to be performed for the bank to comply with the Danish FSA's order of 21 September 2020. The timetable must be submitted and approved by the Danish FSA, and reporting must be undertaken in connection with the assessment of the progress of this work.

As stated in the Danish FSA's decision of 26 November 2020, the impartial reviewers must, on an ongoing basis during the investigation process, report to the Danish FSA on the aspects covered by the investigation. The results of the investigation are to be presented in a written report.

**Publication**

The impartial investigation of Danske Bank forms part of the follow-up on the orders issued by the Danish FSA to the bank on 21 September 2020 for violation of the rules on good business practice. Accordingly, the investigation will not be subject to the Danish FSA's duty of confidentiality (see section 354(3) of the Danish Financial Business Act).

It follows from section 354b of the Danish Financial Business Act that the Danish FSA must inform the public about matters that are addressed by the Danish FSA and which are of public interest. The Danish FSA finds that this present case is of public interest, and the decision will therefore be published on the Danish FSA's website.

**Complaints procedure**

In accordance with section 371(1) of the Danish Financial Business Act, decisions made by the Danish FSA may be brought before the Danish Company Appeals Board by email to ean@naevneneshus.dk or by post to Erhvervsankenævnet, Toldboden 2, DK-8800 Viborg (tel. +45 72 40 56 00) no later than four weeks after the receipt of such decisions. Under section 7 of the Danish Executive Order on the Company Appeals Board of the Danish Ministry of Industry, Business and Financial Affairs, complaints to the Danish Company Appeals Board are subject to a fee of DKK 4,000. However, if the complaint does not concern the complainant's current or future business matters, the fee is DKK 2,000. Under section 15(4) of the Danish Executive Order, the board or its chairperson on its behalf may decide to refund part of or the whole fee paid if the complainant's claim is upheld wholly or in part. The fee will be refunded if the Danish Company Appeals Board decides not to consider the complaint.

Yours faithfully

Jesper Berg  
Director General